

**Military Justice Company Level
181-CCFS-C13 / Version 2
Effective Date 02 Nov 2012**

SECTION I. ADMINISTRATIVE DATA

**All Courses
Including This
Lesson**

<u>Course Number</u>	<u>Version</u>	<u>Course Title</u>
None		

**Task(s)
Taught(*) or
Supported**

<u>Task Number</u>	<u>Task Title</u>
None	

**Reinforced
Task(s)**

<u>Task Number</u>	<u>Task Title</u>
None	

Knowledge

<u>Knowledge Id</u>	<u>Title</u>	<u>Taught</u>	<u>Required</u>
None			

Skill

<u>Skill Id</u>	<u>Title</u>	<u>Taught</u>	<u>Required</u>
None			

**Administrative/
Academic
Hours**

The administrative/academic hours required to teach this lesson are as follows:

<u>Academic</u>	<u>Resident Hours / Methods</u>		
No	2 hrs	30 mins	Briefing
Yes	0 hrs	0 mins	Test Review
Yes	0 hrs	0 mins	Test
<hr/>			
Total Hours:	2 hrs	30 mins	

**Test Lesson
Number**

<u>Hours</u>	<u>Lesson Number</u>
None	

**Prerequisite
Lesson(s)**

<u>Lesson Number</u>	<u>Lesson Title</u>
None	

**Training
Material
Classification**

Security Level: This course/lesson will present information that has a Security Classification of: U - Unclassified.

**Foreign
Disclosure
Restrictions**

FD5. This product/publication has been reviewed by the training/educational developers in coordination with the The Judge Advocate General's Legal Center and School FD authority. This product is releasable to students from all requesting foreign countries without restrictions.

References

<u>Number</u>	<u>Title</u>	<u>Date</u>	<u>Additional Information</u>
AR 27-10	MILITARY JUSTICE	03 Oct 2011	

**Student Study
Assignment**

None

Instructor Requirements

Absent exceptional circumstances, this lesson should be taught by a judge advocate. MOS 27A judge advocate.

Additional Support Personnel Requirements

<u>Name</u>	<u>Student Ratio</u>	<u>Qty</u>	<u>Man Hours</u>
None			

Equipment Required for Instruction

<u>ID - Name</u>	<u>Student Ratio</u>	<u>Instructor Ratio</u>	<u>Spt</u>	<u>Qty</u>	<u>Exp</u>
None					

Materials Required

Instructor Materials:

None

Student Materials:

None

Classroom, Training Area, and Range Requirements

<u>ID - Name</u>	<u>Quantity</u>	<u>Student Ratio</u>	<u>Setup Mins</u>	<u>Cleanup Mins</u>
17136-X-1400-20 Classroom XXI			0	0

Ammunition Requirements

<u>DODIC - Name</u>	<u>Exp</u>	<u>Student Ratio</u>	<u>Instruct Ratio</u>	<u>Spt Qty</u>
None				

Instructional Guidance

NOTE: Before presenting this lesson, instructors must thoroughly prepare by studying this lesson and identified reference material.

None

Proponent Lesson Plan Approvals

<u>Name</u>	<u>Rank</u>	<u>Position</u>	<u>Date</u>
clarence.j.mcafee	Not available	Approver	02 Nov 2012

SECTION II. INTRODUCTION

Method of Instruction: Briefing
Instr Type(I:S Ratio/Qty): 27A(null:null/0)*
Time of Instruction: 10 mins
Instructional Strategy: Lecture
Note: Marked as (*) is derived from the parent learning object

Motivator

Good (morning) (afternoon). My name is (). The next lesson is entitled, "Military Justice Company Level."

Note: Show Slide 39

graphic not found for sequence #:39

This is a briefing concerns the military justice system and the leader's role in it. This brief will cover the legal foundation that supports the military justice system, the components of the military justice system and both the punitive and non-punitive options that are available to leaders and commanders.

Pictured above is the seal of the United States Court of Appeals for the Armed Forces, the highest military court. An appeal from this court goes to the United States Supreme Court.

"ALWAYS call your judge advocate when you have questions or concerns. Train your staff to call your judge advocate.

Often, your judge advocate will be willing to come and train your staff."

Terminal Learning Objective

NOTE. Inform the students of the following Terminal Learning Objective requirements.

At the completion of this lesson, you [the student] will:

Action:	Military Justice Company Level
Conditions:	In a classroom environment learn The Military Justice Company Level Procedures
Standards:	You must comprehend/ understand Military Justice Company Level Procedures IAW AR 27-10

Safety Requirements

Low

Risk Assessment Level

None

Environmental Considerations

NOTE: Instructor should conduct a Risk Assessment to include Environmental Considerations

IAW FM 3-34.5, Environmental Considerations {MCRP 4-11B}, and ensure students are briefed on hazards and control measures.

None.

Evaluation

NOTE: Describe how the student must demonstrate the accomplishment of the TLO. Refer student to the Student Evaluation Plan.

**Instructional
Lead-in**

Instruction Note:

Selected Note Pages contain instruction comments to assist with your presentation.

SECTION III. PRESENTATION

NOTE: Inform the students of the Enabling Learning Objective requirements.

A. ENABLING LEARNING OBJECTIVE

ACTION:	Comparison of Military and Civilian Military Justice Systems
CONDITIONS:	In a classroom environment compare Military and civilian Justice systems
STANDARDS:	You must comprehend/ understand the differences between the Military and Civilian Justice systems IAW AR 27-10

ELO A - LSA 1. Learning Step / Activity ELO A - LSA 1. Comparison of Military and Civilian Military Justice Systems

Method of Instruction: Briefing

Instr Type(I:S Ratio/Qty): 27A(/0)

Time of Instruction: 0 hrs 5 mins

Instructional Strategy: Lecture


Media Type: PowerPoint Presentation

Security Classification: This course/lesson will present information that has a Security Classification of: U - Unclassified.

Note: Show Slide 3

Why do we have a Military Justice system?

- Promote Justice
- Help Maintain Good Order and Discipline in the Armed Forces
- Promote Efficiency and Effectiveness in the Military
- Strengthen National Security



MJ LEADER BRIEF

Current as of 1 OCT 2012

•Instructor Comments:

- Although Commanders administer military justice, Commanders rely on

subordinate leaders for advice and recommendations. Proper administration of military justice will not only ensure good order and discipline but also provide unit security and enhance military readiness.

Note: Show Slide 4

Comparison of Military and Civilian Military Justice Systems

- Article 32 Hearing v. Grand Jury
- Right to Counsel
- Jury System
- Guilty Pleas



MJ LEADER BRIEF

Current as of 1 OCT 2012

• **Instructor Comments:**

- The military justice system differs from the civilian justice system in a number of ways.

- For example:

(1) To determine whether the facts of a particular case warrant a trial, the military justice system uses an Article 32 Hearing, while the federal and some state systems convene a **Grand Jury**.

- **Article 32:** Open proceeding, accused & counsel present, right to cross-examine witnesses and to present a defense.

- **Grand Jury:** Secret proceeding, no right to confrontation, no right to present evidence.

(2) Right to counsel

- **Military:** Free military counsel in all cases (Explain the function of the Trial Defense Service, Legal Assistance attorney).

- **Civilian:** Right to free counsel based upon indigence and often only when there is a possibility of confinement.

(3) Jury System

- **Military:** Jury selected by convening authority. Minimum of 5 jurors on a GCM, and 3 jurors in a SPCM -- possible 1/3 enlisted if accused requests. Except in capital cases, unanimous verdict NOT required.

- **Civilian:** Jury selected at random often from voter registration lists. Usually 12 jurors. Usually requires unanimous verdict. Only required (if accused requests) in cases where confinement could exceed 6 months.

(4) Guilty Pleas

- **Military:** Rigorous providency hearing. Plea agreement sets maximum punishment judge can award.

- **Civilian:** Often less rigorous providency hearing. Often, Prosecutor only makes recommendations to the judge.

Note: Show Slide 5

Legal Sources of Military Justice

- US Constitution
- Uniform Code of Military Justice (UCMJ)
- Manual for Courts-Martial 2012 (M.C.M.)
- Army/Local Regulations
- Court Decisions



MJ LEADER BRIEF

Current as of 1 OCT 2012

- **Instructor Comments:**

- The authority for a separate system of military justice comes from the Constitution of the United States. Art. I, sec. 8, clause 14 grants Congress the power to “make Rules for the Government and Regulation of the land and naval forces.” Pursuant to this power, Congress, in 1950, enacted the Uniform Code of Military Justice to govern all the Armed Forces.

- **Article 36, UCMJ** provides the President with authority to prescribe pretrial, trial, and post-trial procedures while **Article 56** gives the President the authority to set forth maximum punishments for violations of the UCMJ. Arising out of the President’s

use of this power is the Manual for Courts-Martial, an Executive Order of the President.

- The most recent edition of the **MCM** was issued in 2012, and contains 5 parts: Preamble; Rules for Courts-Martial; Military Rules of Evidence; Punitive Articles; and Non-judicial Punishment Procedures.

- Additionally, **AR 27-10** sets forth policies and procedures regarding the administration of military justice, and implements the MCM. Often, local commands create their own version of AR 27-10. The military justice system draws from both military and federal court decisions.

Check on Learning: *None.*

Review Summary: *None.*

CHECK ON LEARNING (ELO A): *None.*

REVIEW SUMMARY(ELO A): *None.*

B. ENABLING LEARNING OBJECTIVE

ACTION:	Discuss UCMJ Jurisdiction
CONDITIONS:	In a classroom environment discuss the UCMJ Jurisdictions
STANDARDS:	You must comprehend/ understand UCMJ Jurisdictions IAW AR 27-10

ELO B - LSA 1. Learning Step / Activity ELO B - LSA 1. UCMJ Jurisdiction

Method of Instruction: Briefing

Instr Type(I:S Ratio/Qty): 27A(/0)

Time of Instruction: 0 hrs 15 mins

Instructional Strategy: Lecture

Media Type: PowerPoint Presentation

Security Classification: This course/lesson will present information that has a Security Classification of: U - Unclassified.

Note: Show Slide 6

UCMJ Jurisdiction

Over the Person:

- Active Duty Soldiers and Reservists while on AD
- Military Academy Cadets and Midshipman
- National Guard Personnel in Federal Service (Under Title 10, U.S.C.)
- Retirees
- Enemy Prisoners of War
- Others (Some Civilians deployed with units)

Over the Offense:

- Worldwide Jurisdiction
- Possible Concurrent Jurisdiction

MJ LEADER BRIEF

Current as of 1 OCT 2012

• **Instructor Comments:**

- When we consider who, or what offenses are governed by the UCMJ we are asking who or what is subject to its jurisdiction.

WHO:

- Person -- The accused must be subject to court-martial jurisdiction (i.e. must have "status" as member of the Armed Forces).
- Reserve Jurisdiction -- In 1986, Congress added UCMJ jurisdiction over weekend drills (IDT); allowed UCMJ jurisdiction to continue after a period of active duty for offenses committed during active duty and provided for involuntary recall to active duty for court-martial, Article 32 investigation, and non-judicial punishment.
- Retirees – This jurisdiction is seldom invoked, but a legal possibility (e.g. BG(R) Hale)

WHAT:

- Crimes as defined in the UCMJ.

WHERE:

- Can apply to active duty Soldiers wherever found.

Note: Show Slide 7

Crimes under the UCMJ

Common Law Crimes

- Homicide
- Rape
- Larceny
- Robbery
- Assault and Burglary



Military Crimes

- Disrespect
- Disobedience
- AWOL
- Conduct Unbecoming an Officer
- Conduct Prejudicial to Good Order and Discipline

MJ LEADER BRIEF

Current as of 1 OCT 2012

• Instructor Comments:

- There are 2 types of crimes under the UCMJ -- Common Law Crimes and Military Crimes.
- Common Law Crimes include homicide, rape, larceny, robbery, assault and burglary.
- Military crimes are unique to military service and include such things as:
 - Disrespect (Articles 89 & 91)
 - Disobedience (Articles 90-92)
 - AWOL (Art. 86)
 - Conduct unbecoming an officer and gentleman (Art. 133)
 - Conduct prejudicial to good order and discipline (Article 134)

Note: Show Slide 8

[illegible]

- To remain silent
- To be informed that any statement you make can be used against you
- To be informed of the nature of the suspected offense

- Right to Counsel

[illegible]

Current as of 1 OCT 2012

- When questioning ordinary witnesses, you do not need to warn them of any rights. However, before questioning anyone suspected of a crime, you must inform them of their rights. You should do so and obtain their signature on the rights warning card, DA Form 3881. DA Form 3881 describes all suspect rights from wherever they are arrested, and so includes the right to counsel and prompts the interviewer to inform the suspect of the nature of the charges.

- The right to counsel is derived from the 5th and 6th Amendments to the Constitution and is NOT codified in Article 31(b) of the UCMJ. It is a constitutional right available to soldiers and is discussed throughout this presentation. It also appears on Form 3881, Rights Warning Certificate as discussed above.

11

Key Personnel in the Military Justice System

- Commander
- Staff Judge Advocate
- Trial Counsel
- Defense Counsel
- Military Judge
- Panel Members (Jury)
- Legal Specialist



MJ LEADER BRIEF

Current as of 1 OCT 2012

• Instructor Comments:

• Several individuals play a role in the military justice system. These individuals are:

• Commander: Each level has prosecutorial discretion, and exercises independent judgment with advice and input from subordinate leaders. A Convening Authority is a Commander who has the authority to send a case to court-martial. Generally, Battalion Commanders, Brigade Commanders, and Division or Corps Commanders act as Convening Authorities.

• Staff Judge Advocate -- Senior Ranking Lawyer who personally advises the Commanding General.

• Trial Counsel -- Usually a Captain or Major. Every command is assigned a trial counsel. There is one assigned to each Brigade Combat Team (BCT) also. They serve as both prosecutors in court and Command advisors.

• Defense Counsel -- Separate organization with a separate rating chain. The Trial Defense Service (TDS) became independent in 1979 to avoid real and perceived conflicts of interest and to ensure Soldiers could be zealously defended without defense counsel suffering repercussions.

• Military Judge -- LTC/COL. Separate organization, separate chain of command (Trial Judiciary).

• Panel Members -- Officer and Enlisted Soldiers who serve as a Jury for court-martial.

• Legal Specialist -- MOS 27D. Paralegals frequently assigned to Battalions or Consolidated legal centers.

Note Show Slide 10

Soldier's Rights

- Presumption of Innocence
- Right against self-incrimination
- Right against unreasonable search/seizure
- Fair and Impartial Hearing
- Right to Counsel (in most situations)
- Other Rights (discussed throughout this class)

MJ LEADER BRIEF

Current as of 1 OCT 2012

- **Instructor Comments:**

- In the Military Justice system, Soldiers have many rights derived from various sources of law:

- The Constitution
 - Regulations
 - UCMJ
 - MCM
 - Case Law (court decisions)
 - We will discuss some of these throughout this class.

Note Show Slide 11

Commander's Responsibilities

- Maintain good order and discipline
- Investigate reported offenses
- Enforce the Law
- Protect Soldiers' Rights
- Determine Disposition of Case



MJ LEADER BRIEF

Current as of 1 OCT 2012

• Instructor Comments:

- Commander has the ultimate discretion on how to dispose of offenses.
- Disposition depends on the seriousness of the offense, impact on unit mission and good order and discipline, and the quality of the evidence.
 - Direct vs. Indirect Evidence (e.g., hearsay, circumstantial).
 - Credibility of Witnesses.
 - Existence of Physical Evidence.
- Command Priorities:
 - **Speed:** Different alternatives for resolution of a case vary the time it takes for final resolution. For example, it takes a lot longer to complete a court-martial than an Article 15.
 - **Good Order and Discipline:** Cost and impact on command and society (Art 15 vs. CM).
 - **Justice:** Commanders must consider each case on its own merits, considering the age, level of experience, maturity, duty performance, attitude, personal situation, etc., of each accused.

Check on Learning: None.

Review Summary: None.

CHECK ON LEARNING (ELO B): None.

REVIEW SUMMARY(ELO B): None.

C. ENABLING LEARNING OBJECTIVE

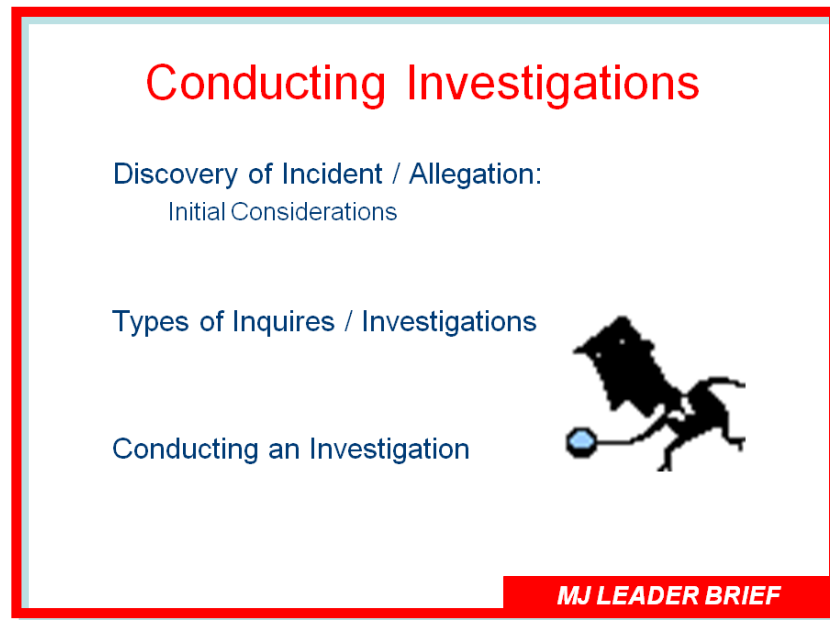
ACTION:	Discuss Inquiries/Interviews
----------------	------------------------------

CONDITIONS:	In a classroom environment discuss Preliminary Inquiries.
STANDARDS:	You must comprehend/ understand how to conduct an Inquiry IAW AR 27-10

ELO C - LSA 1. Learning Step / Activity ELO C - LSA 1. Inquiries/Interviews

Method of Instruction: Briefing
Instr Type(I:S Ratio/Qty): 27A(/0)
Time of Instruction: 0 hrs 5 mins
Instructional Strategy: Lecture
Media Type: PowerPoint Presentation
Security Classification: This course/lesson will present information that has a
Security Classification of: U - Unclassified.

Note Show Slide 12



Current as of 1 OCT 2012

• **Instructor Comments:**


- Conducting investigations and inquiries.
 - Before a Commander can decide what to do in response to an incident or allegation, that Commander must have all of the information.
 - There are different types of investigations both formal and informal, sometimes conducted by the Commander, other times by a subordinate investigating officer (IO).

Note: Show slide 13

Discovery of Incident

Initial Considerations: Who/What/Where/When/How

- Who reported incident?
- What evidence supports allegation?
- Where did the incident occur?
- When did the incident occur?
- How credible is allegation?
- Finally, what type of Inquiry/Investigation is best?



Notify Trial Counsel Early

MJ LEADER BRIEF

Current as of 1 OCT 2012

• **Instructor Comments:**

• Trial Counsel should be consulted from the very beginning. TC can aid the Commander in weighing the above considerations. Here are several things that must be considered by a Commander (listed on slide).

• Commanders **MUST** report most offenses to CID or MPI, depending on the severity of the offense. Commanders must be careful to not have members of the unit conduct investigations when trained law enforcement personnel should be doing it instead.

• Trial Counsel can provide advice to the Commander and can get information from the Military Police, CID, or civilian law enforcement.

Check on Learning: None.

Review Summary: None.

CHECK ON LEARNING (ELO C): None.

REVIEW SUMMARY(ELO C): None.

D. ENABLING LEARNING OBJECTIVE

ACTION:	Compare Searches/Administrative Inspections
CONDITIONS:	In a classroom environment discuss Compare Searches/Administrative Inspections.
STANDARDS:	

	You must comprehend/ understand how to Compare Searches/Administrative Inspections IAW AR 27-10
--	---

ELO D - LSA 1. Learning Step / Activity ELO D - LSA 1. Compare Searches/Administrative Inspections

Method of Instruction: Briefing

Instr Type(I:S Ratio/Qty): 27A(/0)

Time of Instruction: 0 hrs 15 mins

Instructional Strategy: Lecture

Media Type: PowerPoint Presentation

Security Classification: This course/lesson will present information that has a Security Classification of: U - Unclassified.

Note: Show Slide 14

Types of Investigations

Preliminary Inquiry: RCM 303

- Required for any offense reported to the CMDR
- Not only investigation for serious offenses
- No formal requirements

AR 15-6:


- Usually initiated for complex offenses
- Requires appointment of Investigating Officer (JAG will prepare appointment letter)

MPI/CID:

- Serious offense

Discuss Which is Appropriate with Trial Counsel

MJ LEADER BRIEF



Current as of 1 OCT 2012

• **Instructor Comments:**

• A preliminary inquiry will not be the only investigation conducted for serious offenses. Serious offenses should also be investigated by either MPI or CID. Your Trial Counsel can help make contact with MPI or CID if they are not already involved. For example, the discovery of inappropriate material on a computer, depending on the nature of the material, could be an issue for CID. The Commander should contact the Trial Counsel or CID directly.

• AR 15-6 Investigations are frequently ordered by Battalion or Brigade Commanders. These are administrative investigations used to explore complex

situations. Local installations may have policies or regulations in place which require 15-6 investigations under particular circumstances. For example, 15-6 investigations are usually required when sensitive items such as NVGs are lost. Also, in the deployed environment, certain incidents require a 15-6 investigation, which could be in addition to a criminal investigation.

Note: Show Slide 15



Search and Seizure

- 4th Amendment protections
- Who can Authorize
- What is Probable Cause
- Exceptions to Authorization requirement
- Consent Searches
- Health & Welfare Searches (Inspections, Inventories, and Urinalysis)

MJ LEADER BRIEF

Current as of 1 OCT 2012

• **Instructor Comments:**

- There may also be times that a Soldier's property may need to be searched. We will next discuss searches, seizures, and inspections. Inspections are closely related to searches but are conducted with different motives and analyzed differently.

- We will discuss:

- The Constitutional protection against unreasonable searches
- Who can authorize a search
- The conditions that must be met before a search is conducted
- Inspections and the Urinalysis program
- What to do if "contraband" is discovered

Note: Show Slide 16

4th Amendment Protections

"The right of the people to be secure. . . against **unreasonable** searches and seizures, shall not be violated, and no **Warrants** shall issue, but upon **probable cause** . . ."

Applies to Soldiers !!!

"Unreasonable" is the key term that defines what you can and can't do and how you do it



MJ LEADER BRIEF

Current as of 1 OCT 2012

- **Instructor Comments:**

- The Fourth Amendment to the Constitution protects people from "UNREASONABLE" searches. Soldiers, despite their status in the military, are also protected by this right.
- Commanders must be able to distinguish between REASONABLE and UNREASONABLE.

Note: Show Slide 17

Authorizing a Search

Who Can Authorize a Search

"Competent Authority" based upon "Probable Cause."

- Civilian Authority (Judge)
- Military Judges
- Military Magistrates
- Commander or Acting Commander* (Authority cannot be delegated)

*Can ONLY authorize searches in unit area
(Includes unit's barracks or vehicles in unit area)

COMMANDER'S SHOULD NOT **CONDUCT** SEARCHES!

MJ LEADER BRIEF

Current as of 1 OCT 2012

• Instructor Comments:

- If a warrant is required, it must be authorized by a "competent authority" and based upon probable cause to be REASONABLE.
- Competent authority includes:
 - A competent civilian authority (judge)
 - A Military Magistrate: A lawyer who serves as a neutral and detached officer to review the evidence and situation in a case. Usually, it is either a CID Agent or MP Investigator who provides the information when requesting authorization to search. A Military Magistrate is appointed to the position by orders, receives training, and reports directly to a Military Judge while performing those duties.
 - Commanders (or Acting Commanders who are on orders in that capacity) may authorize a search if all conditions for a REASONABLE search are met.
 - Commanders involved in the investigation should NOT conduct searches because they are no longer neutral and detached. Get authorization from the next higher commander.

Note: Show Slide 18

What is Probable Cause?

Probable cause: “A **Reasonable Belief** that the person, property, or evidence sought is located in the place or on the person to be searched.” M.R.E. 315(f)

Reasonable Belief is formed from information that is :

- *Supported by verifiable evidence*
- *Timely*
- *Credible*

AND NOT based on:

- *Intuitive suspicion*

GET THE FACTS!!!!

MJ LEADER BRIEF

Current as of 1 OCT 2012

• Instructor Comments:

- For a search to be REASONABLE, it must be based upon probable cause.
 - Probable cause is based on timely and reliable facts, NOT on mere suspicion and rumors.
 - The more the who, what, where and when is known, the more likely probable cause exists.
 - For example, a Soldier's report that he overheard a statement that “I have some great ‘party favors’ in my room and we will have a good time on Saturday” but the Soldier is unsure who said it, without more is probably not enough to support a probable cause finding.
 - However, the Soldier's statement that he overheard his roommate's statement (WHO), personally saw the marijuana (WHAT) in a footlocker (WHERE) and knows that his roommate has referred to marijuana as “party favors,” in the past is enough to support a probable cause finding.
 - It is always best to give such information to the Commander and let the Commander consult trial counsel and/or the CID Drug Suppression Team for a probable cause analysis.

Note: Show Slide 19

Authorization Not Required

- Item in Plain View (Officer legally present)
- Consent
- Incident to Lawful Arrest
- Exigent Circumstances (Destruction of Evidence; Hot pursuit; Medical Emergency)

MJ LEADER BRIEF

Current as of 1 OCT 2012

•Instructor Comments:

- Certain circumstances do not require that prior authorization be obtained prior to conducting a search or seizing evidence. However, except in the case of a consent search, this does not alleviate the need for probable cause.

- Plain view: A doctrine that allows officer to seize contraband or evidence that is visible and in the open and whose incriminating nature is immediately apparent. The Plain view doctrine applies when an officer is authorized to be in a certain area at the time the object is seen, smelled or felt (plain smell, plain feel ie. during a frisk) and the contraband item is detectable without moving or opening anything.

Note: Show Slide 20

Authorization Not Required

Consent

Consent: If a person *voluntarily* consents to a search of person or property under his/her control, no PC or warrant is required.

- Must exercise actual control or have apparent authority over property to consent.
- Consent may be withdrawn anytime
- Must be VOLUNTARY NOT COERCED

MJ LEADER BRIEF

Current as of 1 OCT 2012

• Instructor Comments:

- Individuals may voluntarily consent to a search. There should be another witness to the consent and it should be obtained in writing. The government must prove by clear and convincing evidence that consent was given voluntarily and those precautions will provide additional evidence to help them meet that burden.

- A request to consent to a search does not require a rights warning.
- A Soldier may give limited consent.
- The Soldier may withdraw their consent at any time and the search must be terminated.

- Most importantly, a Soldier's consent must be voluntary or the fruits of the search will be excluded at trial.

Note: Show Slide 21

Authorization Not Required

Lawful Arrest

Investigative Detention/Frisks:

- During a **lawful arrest**, limited searches of the person, and the area surrounding the person and subject to their control, may be performed without a probable cause determination.
- Why? To prevent an individual being arrested from reaching for a weapon or attempting to conceal or destroy evidence.



MJ LEADER BRIEF

Current as of 1 OCT 2012

• Instructor Comments:

- Searches incident to apprehension do not require prior authorization.
- However, there must be reasonable grounds to believe that an offense has been committed and that the individual being apprehended committed the offense for the search conducted pursuant to the arrest to be reasonable.
- The search may extend to the suspect's person, and the immediate area subject to the person's control at the time the apprehension is made. (Wingspan)
- Evidence obtained in compliance with these guidelines is admissible in either a court-martial or Article 15 hearing.

Note: Show Slide 22

Authorization Not Required Exigent Circumstances

'Those circumstances that would cause a **reasonable person** to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.'

United States v. McConney, 728
F.2d 1195, 1199 (9th Cir.), cert.
denied, 469 U.S. 824 (1984).

MJ LEADER BRIEF

Current as of 1 OCT 2012

- **Instructor Comments:**

- No prior authorization is required for a search conducted due to exigent circumstances. However, it must be conducted pursuant to a reasonable belief that the search is necessary to prevent:

- Removal, destruction, or concealment of evidence
 - Physical harm while awaiting command approval of the search

Note: Show Slide 23

Authorization Not Required Administrative Searches

A.K.A. Health & Welfare Inspections

Commanders have the right/duty to inspect Soldiers and equipment to ensure readiness, property accountability, order & discipline, and health & welfare of Soldiers

- An inspection must **NOT** be a cover (“**subterfuge**”) for an unlawful search
- Contraband found during a legitimate inspection ***may be used*** as evidence.

MJ LEADER BRIEF

Current as of 1 OCT 2012

• Instructor Comments:

- Commanders also have the authority to order Administrative Inspections. Administrative Inspections are not considered searches. An “administrative inspection,” refers to an inspection directed to ensure the security, military fitness, good order and discipline of a unit, installation, or vehicle. Random, rather than targeted Urinalysis testing falls within this category.
- Commanders should schedule inspections regularly throughout their time in command. This does not mean that commanders are required to announce them or have a set schedule for them. In fact, it is recommended that the number of personnel with knowledge of upcoming inspections is limited.
- When conducting an administrative inspection, a Commander should articulate why the search is being conducted (its primary purpose). Commanders should limit the scope of such an inspection -- it should be no more intrusive than is necessary to accomplish the primary purpose. In addition a Commander should limit the discretion of the individuals authorized to conduct the inspection.
- Conducting inspections immediately following the report of a specific offense, targeting specific individuals or treating individuals differently during an inspection subjects the government to challenge and creates a burden of proving by clear and convincing evidence that the inspection was conducted for a proper purpose if and when it is challenged.

Note: Show Slide 24

Authorization Not Required Administrative Searches

Urinalysis Program (AR 600-85)

Types of Tests:

- Searches based on Suspicion (Need PC and prior authorization)
- Fit for Duty: Limited use only
- Inspections (Health & Welfare) ie. Random

Actions after positive results:

- Flag; Call CID; Schedule trip to TDS, Army Substance Abuse Program
- **Must** initiate separation (Ch. 14)
- See your Brigade paralegals for assistance

MJ LEADER BRIEF

Current as of 1 OCT 2012

• Instructor Comments:

- In order for the Army Urinalysis program to be effective:
 - Leaders must ensure the unit has trained and qualified Unit Prevention Leaders (UPLs) to properly administer the Urinalysis Program.
 - Ensure the tests are coded correctly. It is imperative that the codes are properly documented. Incorrect coding has resulted in Urinalyses conducted pursuant to probable cause being excluded from trial.
 - Units should have a written policy stating that Soldiers returning from being AWOL submit to a urinalysis within 24 hours of returning to duty. This urinalysis is considered an Health and Welfare INSPECTION and should be coded as such. In this way any evidence secured through this inspection should be admissible at trial.
 - Limited Use: Results may be used for some purposes but not others. Most common limited use urinalysis results come from Soldiers enrolled in the Army Substance Abuse Program (ASAP). Limited use results cannot be the basis of judicial or nonjudicial punishment.

Note: Show Slide 25

Handling Evidence

- Preserve Condition of Evidence
- Preserve Chain of Custody

MJ LEADER BRIEF

- Once evidence is seized during a lawful search or inspection, it is vital that such evidence is handled in an appropriate manner. Careless handling can be detrimental to a conviction at court-martial. You must treat evidence seized during a search as “sensitive items.”
- Always prevent or minimize changes to the evidence and prevent damaging the appearance of purity-- do not accidentally scratch, bend, or unnecessarily touch (taint) the evidence.
- Always preserve the chain of custody. For example, someone should safeguard evidence while the MP/CID is notified. Once evidence is turned over to MP/CID, sign an Evidence/Property Custody Document (DA Form 4137).
- Urinalysis documentation and specimens collected during urinalysis should be handled in compliance with AR 600-85.
- This is a sample DA Form 4137. You are probably already familiar with this.

Review Summary: None.

REVIEW SUMMARY(ELO D): None.

E. ENABLING LEARNING OBJECTIVE

ACTION:	Discuss Nonpunitive Administrative Actions
CONDITIONS:	In a classroom environment discuss Nonpunitive Administrative Actions
STANDARDS:	You must comprehend/understand Nonpunitive Administrative Actions process IAW AR 27-10

ELO E - LSA 1. Learning Step / Activity ELO E - LSA 1. Discuss Nonpunitive Administrative Actions

Method of Instruction: Briefing

Instr Type(I:S Ratio/Qty): 27A(/0)

Time of Instruction: 0 hrs 15 mins

Instructional Strategy: Lecture

Media Type: PowerPoint Presentation

Security Classification: This course/lesson will present information that has a Security Classification of: U - Unclassified.

Note: Show Slide 26

Disposition of Offenses

Command Considerations

Once the investigation is complete, Commander must consider:

- How well is allegation **Substantiated**
(Quality of Evidence Collected)
- What are Command **Priorities**
(Speed, Good Order and Discipline, Justice)
- Are there **Individual** Soldier Considerations
(Duty Performance, Attitude/Motivation, Personal Problems)
- Are there **Sentencing** Factors
(Rehabilitation, Protection of Society, Preservation of good order and discipline, Deterrence - Specific & General)

MJ LEADER BRIEF

Current as of 1 OCT 2012

• **Instructor Comments:**

• Commander has ultimate discretion on how to dispose of offenses. The decision should be based on:

- Quality of Evidence: Will affect whether admissible in court.
 - Direct vs. Indirect Evidence (e.g., hearsay, circumstantial)
 - Credibility of Witnesses.
 - Existence of Physical Evidence.

- Whether the level of proof required by the contemplated action can be satisfied
 - ART 15, GCM = Beyond a reasonable doubt
 - Administrative actions = Preponderance of the evidence
- Command Priorities:
 - Speed: Your alternatives for resolution of a case will vary the time it takes for final resolution. For example, it takes a lot longer for a court-martial than an Article 15.
 - Good Order and Discipline: Impact of actions (Art 15 vs. CM)
 - Justice: Give victim and accused their day in court.
 - Nature of Offense/Character of Accused

Note: Show Slide 27



- **Instructor Comments:**
 - After the Commander concludes her/his preliminary investigation:
 - Rule 306 of the Rules for courts-martial provides that offenses under the UCMJ should be disposed of in a timely manner, at the lowest appropriate level.
 - The Command may:
 - Take No Action
 - Take Administrative Action
 - Impose Nonjudicial Punishment (ART 15)
 - Prefer and Forward Charges

Administrative Actions

- Counseling (AR 600-20)
- Corrective Training (AR 600-20)
- Administrative Reprimands (AR 600-37)
- Bar to Reenlistment (AR 601-280)*
- FLAG (AR 600-8-2)
- MOS Reclassification (AR 600-200)
- Security Clearance Revocation (AR 380-67)
- Relief from Duties
- Adverse NCOER/OER
- Removal from Special Status
- Rehabilitative Transfer
- Admin Reductions (AR 600-8-19)*
- Admin Separation (AR 635-200)*

*Does not apply to officers

MJ LEADER BRIEF

Current as of 1 OCT 2012

• **Instructor Comments:**

• Standard of Proof in all administrative actions is “Preponderance of the evidence.” AR 635-200 defines this as “Evidence that, after consideration of all evidence presented, points to a certain conclusion as being more credible and probable than any other conclusion.”

• Commanders have the option of foregoing UCMJ action in favor of administrative alternatives.

• Some frequently taken administrative actions include:

• FLAG: temporary suspension of favorable actions such as pass privilege, attendance at schools and promotion eligibility. Should be initiated at beginning of investigation and removed once action is taken and completed.

• MOS Reclassification: May occur after misconduct, loss of qualification (such as Parachute Riggers), loss of security clearance (many MOS require security clearances), or erroneous awarding of it (a Soldier was never qualified for a the MOS).

• Security Clearance Revocation: May result from certain types of misconduct or even from failure to pay debts.

• Relief from duties: Especially leadership positions.

• Adverse NCOER/OER - Automatic if relieved for cause.

• Removal from Special Status: i.e. Drill SGT.


- Rehab Transfer: Allows the Soldier opportunity to excel in a different environment. Opportunity for rehab transfer may be limited based on unit of assignment.
- Administrative Reductions: May result from inefficiency or misconduct in or out of uniform. Officers can not be reduced.

Note: Show Slide 29

Counseling Soldiers

The Key to successful administrative actions:

- Soldier must understand commander's expectations for future conduct.
- Oral counseling is not enough (Creates no record).
- Put it in writing and document misconduct/deficiency with specificity.
- DA 4856 (Counseling form)
 - Include requirements of AR 635-200, para. 1-16 and Part IV, Rehabilitation Results and Comments



MJ LEADER BRIEF

Current as of 1 OCT 2012

• **Instructor Comments:**

- The following involuntary separation actions under AR 635-200 require written counseling and rehabilitation at least once before initiation of separation actions:
 - Parenthood (Chapter 5-8)
 - Personality Disorder (Chapter 5-13)
 - Other Designated Physical or Mental Conditions (Chapter 5-17)
 - Entry-level Performance and Conduct (Chapter 11)
 - Unsatisfactory Performance (Chapter 13)
 - Pattern of Misconduct (Chapter 14-12a and b)
 - Failure to Meet Body Fat Standards (Chapter 18).
- These actions require that the Soldier receive a reasonable chance to improve. Army Regulation 635-200 states that non-trainees should be transferred to another battalion-sized unit for three months and re-evaluated before separation is initiated. However, the regulation also authorizes the separation authority to waive this requirement in many cases.

- Commanders must ensure that a responsible person properly fills out the Counseling Form (DA Form 4856). This includes a documentation of the follow-up to the counseling and results of rehabilitation.

Note: Show Slide 30

Counseling

“Magic Phrase” or “Silver Bullet”

“You are hereby counseled for the above indicated misconduct and/or unsatisfactory duty performance in accordance with AR 635-200, paragraph 1-16. Continued behavior of this kind may result in initiation of separation action to eliminate you from the Army. If you are separated for unsatisfactory performance, you could receive an Honorable, General, or Other than Honorable (OTH) Discharge. A General or OTH Discharge could severely prejudice you in civilian life. Additionally, an OTH Discharge could deprive you of many or all military and Veterans benefits to include forfeiture of all educational benefits. Any further misconduct or unsatisfactory performance may cause you to be eliminated without further counseling.”

MJ LEADER BRIEF

Current as of 1 OCT 2012

- **Instructor Comments:**

- Not only does AR 635-200 require written counseling for deficiencies, but it also requires specific language be included in the counseling. It requires the Soldier be put on notice of some of the negative effects that could occur if the deficiency is not corrected.

- Sometimes called the “Magic Phrase” or “Silver Bullet.”

- Should be included on every negative counseling statement written.

Including this language on every counseling statement ensures that the Soldier is put on appropriate notice to allow the unit to later pursue administrative separation if necessary.

- Trial Counsel or unit paralegal can provide language and instruction for properly filling out the form.

Note: Show Slide 31

Corrective Training

A.K.A. - **Remedial** Training

- Training or instruction must be directly related to the deficiency observed and oriented to correct that particular deficiency
 - Remedial PT
 - Bi-hourly check-in for FTRs
- Training, NOT Punishment
- Must not be humiliating or degrading
- Leader should be present



MJ LEADER BRIEF

Current as of 1 OCT 2012

• Instructor Comments:

- Must relate to the deficiency and cease when rehab has occurred. Must not be used as a subterfuge for nonjudicial punishment. Corrective training should be conducted while the leader is present. For example, if a Soldier's corrective training is scheduled outside normal duty hours, that Soldier's leader or leaders should be there for the training as well. This also reduces the perception that the corrective training is punishment.

- An example of appropriate corrective training for a Soldier who does not report to PT Formation on time would be a requirement that the Soldier report to his Squad Leader 15 minutes prior to the start of every Formation.

- The above depicts inappropriate corrective training (screen shot from and An Officer and a Gentleman).

Note: Show Slide 32

The Administrative Reprimand (AR 600-37)

Documents misconduct or poor performance in official files

- Formal Procedures (Soldier may Rebut in Writing)

Filing options

- Local File
- Permanent File (OMPF)
 - General Officer directed)



MJ LEADER BRIEF

Current as of 1 OCT 2012

• Instructor Comments:

- An administrative written reprimand is official documentation of misconduct or poor performance which is placed in a Soldier's official files.
- Who may Initiate:
 - Enlisted: Immediate or higher level commander in chain of command. A supervisor, school commandant, general officer, or GCMCA.
 - Officers: Immediate or higher level commander in chain of command, general officer, rater, intermediate or senior rater.
- Notice & Rebuttal: May Rebut in writing.
- Filing: Letters are filed in Soldier's MPRJ (local file), for a period of 3 years or less and will be destroyed upon reassignment to another GCM jurisdiction. May be filed in OMPF, upon the direction of a general officer or GCMCA.

Note: Show Slide 33

The Bar to Reenlistment

- The Army desires to retain only those Soldiers of high moral character, competence, and demonstrated adaptability (AR 601-280).
- Directive 2012-03 - new mandatory grounds for a bar
- Initiation of administrative separation or bar to reenlistment required for:
 - Failure to make satisfactory progress in Army Weight Control Program.
 - 2 Consecutive APFT failures.
 - Removal for Cause from NCOES Courses.

MJ LEADER BRIEF

Current as of 1 OCT 2012

• Instructor Comments:

- Bar to Reenlistment (AR 601-280)
 - Policy: Only personnel of high moral character, competence, and demonstrated adaptability to the professional Soldier's moral code will be reenlisted in the Army. Those who do not meet the standard will be barred.
 - Non-trainable Soldiers or Soldiers unsuitable for continued service (single parent Soldiers or Dual Active Duty couples with dependent family members who do not or are unable to file an approved family care plan).
 - Initiation of Bar or separation proceedings required for:
 - Failure to make satisfactory progress in weight control program
 - 2 consecutive APFT failures
 - Removal for cause from NCOES courses.
 - Bar: Is a probationary period that is reviewed at 30-90-180 day intervals. If bar is not removed, then separation action is initiated and Soldier cannot reenlist. There is a long list of reasons to impose in AR 601-280, Ch. 6. Unsuitable/non-trainable Bar.

NOTE: Bar to reenlistment is one of the most UNDER-utilized tools a Commander has!

Note: Show Slide 34

Administrative Separations (AR 635-200)

Soldier's Rights:

- Notice and Opportunity to Respond
- Attorney (Consultation / Board Representation)
- Hearing (Separation Board) if:

> 6 years of service

OR

Other Than Honorable Discharge
recommended

MJ LEADER BRIEF

Current as of 1 OCT 2012

• Instructor Comments:

- AR 635-200 sets forth the criteria for conducting an Enlisted Administrative Separation. Administrative Separations may result in either an Honorable, General, or Other Than Honorable Discharge.
- The Soldier must receive notice and is afforded an opportunity to rebut the recommendation for separation.
- If a Soldier has more than 6 years of service or the Commander recommends the Soldier be discharged Other than Honorably, the Soldier is entitled to a hearing before an Administrative Separation Board.

Note: Show Slide 35

Administrative Separations (AR 635-200)

Characterization of Service (Options):

- Honorable (No misconduct; Entitled to all benefits)
- General (Minor misconduct; Entitled to most benefits)
- Other than Honorable (Requires Board)
 - More serious misconduct
 - Forfeits most benefits

Standard of Proof

Preponderance of the evidence (More likely than not)

MJ LEADER BRIEF

Current as of 1 OCT 2012

• Instructor Comments:

- AR 635-200 sets forth the criteria for conducting an Enlisted Administrative Separation. Administrative Separations may result in either an Honorable, General, or Other Than Honorable Discharge.
- The Soldier must receive notice and is afforded an opportunity to rebut the recommendation for separation.
- If a Soldier has more than 6 years of service or the Commander recommends the Soldier be discharged Other than Honorably, the Soldier is entitled to a hearing before an Administrative Separation Board.

Note: Show Slide 36

Types of Involuntary Separations

- **CHP 5 - Convenience of the Government**
 - 5-8: Parenthood
 - 5-13: Personality Disorder
 - 5-17: Other designated physical or mental condition
- **CHP 7 - Defective/Fraudulent Entry**
- **CHP 9 - Alcohol/Drug Abuse Rehab. Failure**
- **CHP 11 - Entry Level Performance and Conduct**
- **CHP 13 - Unsatisfactory Performance**

MJ LEADER BRIEF

Current as of 1 OCT 2012

• Instructor Comments:

- To ensure successful separation actions there must be a local file that contains legally sufficient counselings IAW AR 635-200, para. 1-16. (Discussed in previous slides).

- Common types of Involuntary Separation initiated by a Command are:

- CH 5: Failure to properly maintain a family care plan, personality disorders, and other designated physical or mental conditions

- CH 7: Enlistment, Reenlistment, and Extensions. Separation may be avoided if basis was waivable and command makes the recommendation.

- CH 9: Alcohol/Drug Abuse Rehabilitation failure.

- CH 11: Entry level performance and conduct. Appropriate when a soldier still in entry level status is unable or unwilling to adapt to military life (lacks effort, ability, discipline) and can not be rehabilitated. Requires counselings and effort at rehab. **Applicable to soldiers with no more than 180 days of creditable continuous AD or IADT or no more than 90 days of Phase II under a split or alternate training option.**

- CH 13: Substandard performance not rising to a crime; need documented counselings and rehab efforts IAW AR 635-200, para. 1-18.

Note: Show Slide 37

Types of Involuntary Separations

- **CHP 14 - Misconduct**
 - 14-12a: Minor Disciplinary Infractions
 - 14-12b: Pattern of Misconduct
 - 14-12c: Serious Misconduct
- **CHP 18 - Failure to Meet Body Fat Standards**
- **CHP 19 - Qualitative Management Program**

MJ LEADER BRIEF

Current as of 1 OCT 2012

• **Instructor Comments:**

- CH 14: This includes misconduct that occurs both on and off post.
 - 14-12a-Pattern of minor infractions, counseling/ rehab required.
 - 14-12b-At least two minor offenses, counseling/ rehab required.
 - 14-12c-One offense, no counseling required, offense would warrant BCD or DD under UCMJ.
- CH 18: Failure to meet the Body Fat Standards outlined in AR 600-9.
- CH 19: Qualitative Management Program. Designed to discharge soldiers that have not potential for future service, ie. will not be promoted and can not progress in their career.

Check on Learning: None.

Review Summary: None.

CHECK ON LEARNING (ELO E): None.

REVIEW SUMMARY(ELO E): None.

F. ENABLING LEARNING OBJECTIVE

ACTION:	Discuss Nonjudicial Punishment (Article 15)
CONDITIONS:	In a classroom environment learn the NonJudicial Punishment procedures.

STANDARDS:	You must comprehend/ understand Nonjudicial Punishment procedures IAW AR 27-10
-------------------	--


ELO F - LSA 1. Learning Step / Activity ELO F - LSA 1. Discuss Nonjudicial Punishment (Article 15)

Method of Instruction: Briefing
Instr Type(I:S Ratio/Qty): 27A(/0)
Time of Instruction: 0 hrs 15 mins
Instructional Strategy: Lecture
Media Type: PowerPoint Presentation
Security Classification: This course/lesson will present information that has a Security Classification of: U - Unclassified.

Note: Show Slide 40

Punitive Options

- Nonjudicial Punishment (Article 15)
- Summary Courts-Martial
- Special Courts-Martial
- General Courts-Martial



MJ LEADER BRIEF

Current as of 1 OCT 2012

- **Instructor Comments:**
 - Among the punitive options available under the UCMJ are both Nonjudicial Punishment (Article 15), and court-martial.
- There are 3 types of court-martial:
 - Summary Courts-Martial
 - Special Courts-Martial
 - General Courts-Martial

Note: Show Slide41

Nonjudicial Punishment

Article 15

- Purpose
 - Empower commanders to punish Soldiers for minor misconduct **quickly** and **effectively**
 - Enhances **good order** and **discipline**
- Function
 - Correct
 - Educate
 - Reform
- Who may impose
 - Commanders

*Absolute right to demand trial by court-martial

MJ LEADER BRIEF

Current as of 1 OCT 2012

• Instructor Comments:

- Article 15: A provision of the UCMJ which authorizes punishment of Soldiers for minor offenses. It is referred to as “nonjudicial punishment” because the punishment is imposed by a commander rather than through a court-martial proceeding.

- A commander should use Article 15 for minor violations of the UCMJ, and when non-punitive administrative procedures have failed or are inappropriate.

- An Article 15 serves the function of correcting, educating, and reforming a Soldier who has engaged in misconduct. Though a punitive action, it enables the Soldier to avoid the stigma of a court-martial.

- An Article 15 may be imposed on a commissioned officer, as well as on enlisted personnel.

- A soldier has the right to turn down an Article 15 and request a court-martial. Therefore, commanders should consult trial counsel before imposing an Article 15 to be sure enough evidence exists to support a court-martial should the Soldier turn it down.

- **IMPORTANT TO REMEMBER:** A commander can combine administrative and nonjudicial punishment in an attempt to maintain good order and discipline. A combination of these measures is often the most effective application. For example, a squad leader who is caught drunk on duty might be relieved from his leadership position, required to give alcohol abuse related classes as a form of corrective training, and given an Article 15. Be sure not to structure such classes as punishment or

otherwise attempt to embarrass the Soldier (e.g., the class need not know that the instructor was caught drunk on duty).

Note: Show Slide 42

Article 15

Initial Responsibilities Of The Commander

Preliminary Investigation

- Whether Offense Was Committed
- Whether Soldier Was Involved
- Character & Military Record Of The Soldier

DA Form 2627 Or 2627-1

Notification Of Soldier

MJ LEADER BRIEF

Current as of 1 OCT 2012

• **Instructor Comments:**

- Initiation of Article 15 -- Should the allegations appear true following a preliminary investigation, the commander must then prepare either a DA Form 2627 (Formal), or 2627-1 (Summarized).
- Notice -- Once a commander determines that Article 15 proceedings are warranted, he/she should notify the Soldier. Such notification may be accomplished by NCOs in grades E7 and above. Such notice should inform the Soldier of his rights in the proceedings.
- Two types of Article 15 exist:
 - Summarized Article 15
 - Formal Article 15
 - The two types of Article 15 differ in the magnitude of the proceedings and the severity of the punishment available to the commander.
 - Formal proceedings should be initiated only where the commander feels that appropriate punishment might exceed 14 days of restriction and/or extra duty to avoid the severe ramifications of a Formal Article 15 proceeding.

Note: Show Slide 43

All Article 15s Soldiers' Rights

- Remain Silent
- Examine Evidence
- Present A Defense
- Call Witnesses
- Demand Trial By court-martial
- Have An Appeal

Formal Article 15s have additional rights, see next slide

MJ LEADER BRIEF

Current as of 1 OCT 2012

• **Instructor Comments:**

- Soldiers always have the following rights:
 - To be informed of the charges against them
 - To cross-examine witnesses
 - To present evidence and witnesses on his/her own behalf.
 - The right to demand a trial by court-martial when informed of Article 15 proceedings.
- If the Soldier accepts the Article 15 procedures he/she has the right to appeal the decision.
- A Soldier's acceptance of Article 15 procedures is not an admission of guilt.

Note: Show Slide 44

Formal Article 15 Soldiers' Rights

- Consult With Counsel
- Have A Spokesperson
- Ask For An Open Hearing

MJ LEADER BRIEF

Current as of 1 OCT 2012

• **Instructor Comments:**

- Unlike Summarized proceedings, a Soldier involved in a Formal proceeding has the right to consult an attorney. However, there is no right to have a government attorney present at the hearing.
- A Soldier may request to be represented by a spokesperson at the hearing. This spokesperson has no right to examine or cross-examine witnesses, but can make suggestions as to relevant issues or questions to the commander.
- In addition, a Soldier may request that the Formal Article 15 hearing be open. The Commander, however, has the discretion to approve or disapprove the request.

Note: Show Slide 45

Article 15 Hearing

Purpose: determine if the accused committed the offense and if so impose punishment

Commander's actions:

- Consider the evidence presented
- Decide guilt or innocence
- Impose appropriate punishment
- Explain rights to appeal

Burden of Proof: Beyond a reasonable doubt

MJ LEADER BRIEF

Current as of 1 OCT 2012

• Instructor Comments:

- A Soldier can be found guilty only if the evidence shows BEYOND A REASONABLE DOUBT that the Soldier committed the charged offense.

Note: Show Slide 46

Article 15 Punishment

- Admonishment/reprimand
- Forfeiture of pay
- Restriction
- Extra duty
- Reduction in rank
- Correctional custody (If installation has an approved facility)
- Amount of punishment depends on rank of accused and imposing authority

MJ LEADER BRIEF

Current as of 1 OCT 2012

- **Instructor Comments:**

- If a Soldier is found guilty at an Article 15, a Commander must determine the appropriate punishment for the offense or offenses. The Commander has the discretion to give up to the maximum punishment or no punishment at all.
- Possible Punishments include:
 - Admonishment or Reprimand
 - Restriction
 - Extra Duty
 - Forfeiture of Pay
 - Reduction in Rank
 - Correctional Custody.
- Punishment is usually effective immediately but may be delayed for good cause.

Note: Show Slide 47

Article 15 Enlisted Types & Punishments Chart			
TYPES	Summarized	Company	Field Grade
Forfeiture	No	7 Days Pay	1/2 Of 1 Mo. For 2 Mo.
Reduction	No	1 Grade (E1-4)	E4-1: Total E5-6: 1 Gd
Restriction	14 Days	14 Days	60 Days*
Extra Duty	14 Days	14 Days	45 Days

*45 days max if combined with extra duty

MJ LEADER BRIEF

Current as of 1 OCT 2012

- **Instructor Comments:**

- This chart illustrates the maximum punishment allowed for each type of ART 15 proceeding.

Note: Show Slide 48

Article 15 Officer Types & Punishments Chart		
<u>Company Grade</u>	<u>Field Grade</u>	<u>General Officer</u>
Written reprimand/ admonition	Written reprimand/ admonition	Written reprimand/ admonition
30 days restriction	30 days restriction	60 days restriction, or 30 days arrest in quarters Forfeiture of ½ of 1 month's pay for 2 months

Current as of 1 OCT 2012

• **Instructor Comments:**

- This chart illustrates the maximum punishment allowed for each type of ART 15 proceeding.

Note: Show Slide 49

Article 15 Appeals	
Procedure:	
<ul style="list-style-type: none"> • Written Appeal (Some Commanders Permit Personal Appearance) • Submitted Through Imposing Commander 	
Appellate Authority:	
<ul style="list-style-type: none"> • Next Higher Level Commander 	

Current as of 1 OCT 2012

• **Instructor Comments:**

• Soldiers may appeal the punishment imposed through an Article 15 proceeding on grounds that the punishment was unjust, or too harsh.

• Procedure -- Appeals are made in writing, using a DA Form 2627 or 2627-1. Documents supporting the appeal may also be attached and submitted. Normally, a Soldier must appeal within 5 days of the imposition of punishment.

• Review – The Trial Counsel must review the Article 15 and supporting documents. The Trial Counsel will then determine if the evidence supports a finding of guilty and if the punishment was authorized.

• Actions -- Action may be taken on an appeal by the next higher commander to the Commander who imposed the punishment.

• Possible actions on an appeal are:

- Approval of the punishment
- Reduction of the punishment
- Remission: The unexecuted portion of the punishment is vacated.
- Suspension of punishment: Soldier placed on probation (Not to exceed 6 months). Punishment vacated at end of probation unless a UCMJ violation is committed during that time.
- Setting aside punishment: Punishment is completely vacated and all rights, privileges, and property are restored.
- Can change the filing from the performance to the restricted OMPF

Note: Show Slide 50

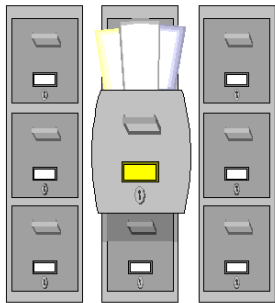
Article 15 Filing

Summarized:

- Kept in unit (local) file for two years or soldier transfers

Formal: Depends upon pay grade of accused

- E-4 and below: File locally
- E-5 and above: File in the OMPF



MJ LEADER BRIEF

Current as of 1 OCT 2012

• **Instructor Comments:**

• When an Article 15 results in a finding of guilt and punishment is imposed the Article 15 must then be filed.

• Summarized: Maintained in local file for 2 years or until the Soldier transfers out of the unit.

• Formal: The filing of a Formal Article 15 depends on the Soldier's grade.

• Enlisted Soldiers who are E4 and below: It will be maintained in the local file for up to 2 years.

• Soldiers in the grade of E-5 or above: the Article 15 is filed in the Soldier's OMPF. The Commander imposing the Article 15 decides whether to file it in the Performance fiche, or the Restricted fiche of the OMPF.

• **NOTE: In recent years, documents filed in the Restricted fiche of the OMPF have been reviewed by promotions boards considering promotion to CSM/SGM.**

Check on Learning: None.

Review Summary: None.

CHECK ON LEARNING (ELO F): None.

REVIEW SUMMARY(ELO F): None.

G. ENABLING LEARNING OBJECTIVE

ACTION:	Discuss Types of Courts-Martial
CONDITIONS:	In a classroom environment learn the Types of Courts-Martial
STANDARDS:	You must comprehend/ understand the Types of Courts-Martial IAW AR 27-10

ELO G - LSA 1. Learning Step / Activity ELO G - LSA 1. Discuss Types of Courts-Martial

Method of Instruction: Briefing

Instr Type(I:S Ratio/Qty): 27A(/0)

Time of Instruction: 0 hrs 15 mins

Instructional Strategy: Lecture

Media Type: PowerPoint Presentation

Security Classification: This course/lesson will present information that has a Security Classification of: U - Unclassified.

Note: Show Slide 51

Courts-Martial

Types:

- Summary Court-Martial
- Special Court-Martial
- General Court-Martial

MJ LEADER BRIEF

Current as of 1 OCT 2012

• Instructor Comments:

- The Commander or anyone subject to the code with knowledge of the alleged incident may PREFER charges against an accused.
- Charges can ONLY be REFERRED to a court-martial by a commander. Commanders may ONLY REFER charges to the level of court-martial they are authorized to convene.

Note: Show Slide 52

Summary Courts-Martial

Convening Authority:

Battalion Commander (LTC)

Soldier's rights:

No right to representation

May refuse SCM

Procedure/Jurisdiction:

- Summary courts officer (usually a MAJ)
- Can not try officers
- Rules of evidence apply

MJ LEADER BRIEF

Current as of 1 OCT 2012

• Instructor Comments:

• Summary Courts-Martial:

- Convened by battalion-level commander (O-5)
 - Can be convened by any higher commander as well
 - Authority to convene can be withheld by higher commander
- No military judge
- The Military Rules of Evidence apply
- Line officer presides over case (should be a FG/can be company grade)
- Usually there are no lawyers at the proceeding but the accused can consult with counsel for a advice and assistance prior to the hearing
- Legal advisor appointed to assist summary court-martial officer

Note: Show Slide 53

Summary Courts-Martial

Maximum Punishment

- Forfeiture of 2/3 of 1 month's pay for 1 month

AND

- E-4 and below: confinement for 30 days, reduction to E-1
- E-5 and above: restriction for 2 months, reduction by 1 grade

MJ LEADER BRIEF

Current as of 1 OCT 2012

No comments

Note: Show Slide 54:

Special Courts-Martial

Convening Authority:

- Special Courts-Martial Convening Authority (SPCMCA)
 - Brigade Commander (COL)

Soldier's rights:

- Right to representation
- Officer/enlisted panel

Procedure/Jurisdiction:

- 3 members and/or Judge



MJ LEADER BRIEF

Current as of 1 OCT 2012

• Instructor Comments:

- Brigade commander (colonel): (SPCMCA). Authority to convene a SPCM is

often withheld by the GCMCA.

- The Accused has a right to defense counsel and the government is represented by the Trial Counsel.
- The Court consists of at least three members and/or a military judge. The Accused may choose to be tried by a judge alone.

Note: Show Slide 55

Special Courts-Martial

Maximum punishment

- 12 months confinement (enlisted only)
- 2/3 forfeiture (pay only) for 12 months
- Reduction to E-1
- Bad conduct discharge (enlisted only)

MJ LEADER BRIEF

Current as of 1 OCT 2012

• **Instructor Comments:**

- The maximum punishments for a special court-martial are:
 - Confinement up to twelve months.
 - Forfeitures are for pay only and do not include allowances.

Note: Show Slide 56

General Courts-Martial

Convening Authority:

(GCMCA) General Courts-Martial
Convening Authority

- Division commander
(major general)

Soldier's Rights:

- Right to representation
- Article 32 hearing
- Officer/enlisted panel



MJ LEADER BRIEF

Current as of 1 OCT 2012

• Instructor Comments:

- Convened by GCMCA. Usually there is only one GCMCA per installation. Not all GO's are GCMCA. Occasionally a large post, such as Fort Bragg or Fort Hood will have more than one GCMCA.
- Requires Article 32 investigation. Can be waived by the accused.
- Full trial procedures apply. CM panel can adjudge any punishment (including the Death Penalty) that does not exceed the maximum punishment for the offense(s).
- Commissioned Officers, Commissioned Warrant Officers, and Cadets are "Dismissed" rather than Discharged.

Note: Show Slide 57

General Courts-Martial

Maximum punishment

- As authorized by law (death)
- Total forfeiture of all pay/allowances
- Reduction to E-1
- Bad Conduct/Dishonorable Discharge
- Dismissal (commissioned officers and commissioned warrant officers)

MJ LEADER BRIEF

Current as of 1 OCT 2012

Instructor Comments:

- Even when authorized by the UCMJ, death cases require special approval in advance.

Check on Learning: None.

Review Summary: None.

CHECK ON LEARNING (ELO G): None.

REVIEW SUMMARY(ELO G): None.

H. ENABLING LEARNING OBJECTIVE

ACTION:	Discuss Preferral and Forwarding of Charges
CONDITIONS:	In a classroom environment learn the procedures in Preferral and Forwarding of Charges
STANDARDS:	You must comprehend/ understand the procedures of Preferral and Forwarding of Charges IAW AR 27-10

ELO H - LSA 1. Learning Step / Activity ELO H - LSA 1. Discuss Preferral and Forwarding of Charges

Method of Instruction: Briefing

Instr Type(I:S Ratio/Qty): 27A(/0)

Time of Instruction: 0 hrs 5 mins

Instructional Strategy: Lecture
Media Type: PowerPoint Presentation
Security Classification: This course/lesson will present information that has a
Security Classification of: U - Unclassified.

Note: Show Slide 58

Prefer & Forward Charges

- DD Form 458 (Charge Sheet), and R.C.M. 307 provide instructions

Charge & Specification Format

- Oath & Personal Knowledge or Investigation
- Forward To SCMCA with recommendation

MJ LEADER BRIEF

Current as of 1 OCT 2012

• **Instructor Comments:**

- Preferring and forwarding Charges: The commander completes a Charge Sheet (DD Form 458). Both the DD Form 458 and R.C.M. 307 provide instructions for properly charging a Soldier with an offense. The Trial Counsel and/or paralegals draft the charge sheets.

- Charges and specifications: A “charge” is a statement of the specific Article of the UCMJ or other law the Accused is alleged to have violated. A “specification” is a concise statement which sets forth the essential facts that show the Accused committed the alleged offense.

- The charges and specifications must be signed under oath before a commissioned officer authorized to administer oaths (this is usually the trial counsel) and must state that the person signing the sheet has personal knowledge of the facts constituting the offense or has conducted an investigation and that the charges and specifications are true to the best of his/her knowledge.

Check on Learning: None.

Review Summary: None.

CHECK ON LEARNING (ELO H): None.

REVIEW SUMMARY(ELO H): None.

I. **ENABLING LEARNING OBJECTIVE**

ACTION:	Discuss Pretrial Restraint and Speedy Trial Rules
CONDITIONS:	In a classroom environment discuss the Pretrial Restraint process
STANDARDS:	You must comprehend/understand the Pretrial Restraint process IAW AR 27-10

ELO I - LSA 1. Learning Step / Activity ELO I - LSA 1. Discuss Pretrial Restraint and Speedy Trial Rules

Method of Instruction: Briefing

Instr Type(I:S Ratio/Qty): 27A/(0)

Time of Instruction: 0 hrs 10 mins

Instructional Strategy: Lecture

Media Type: PowerPoint Presentation

Security Classification: This course/lesson will present information that has a Security Classification of: U - Unclassified.

Note: show Slide 59

Pretrial Restraint Is Authorized Upon Probable Cause That:

- UCMJ offense has been committed
- Accused committed it

AND

- Restraint is required to ensure the accused's presence OR to prevent foreseeable serious criminal misconduct

AND

- Lesser forms of restraint are inadequate

MJ LEADER BRIEF

Current as of 1 OCT 2012

• **Instructor Comments:**

- When allegations are made which if true may warrant a court-martial, the accused should generally be permitted to continue his/her normal duties within the

organization.

- However, Soldiers may be placed under pretrial restraint when there is a “reasonable belief” that:
 - An offense triable by court-martial has been committed
 - The person to be restrained committed it
 - The restraint ordered is required by the circumstances
 - Risk of flight
 - Threat of serious future misconduct
- Under NO circumstances may Soldiers placed under pretrial restraint be subjected to punishment or penalty for the offense which is the basis for that restraint.
 - No punitive duty hours
 - No extra duty

Note: Show Slide 60

Forms Of Pretrial Restraint

- Conditions On Liberty
- Restriction (In Lieu Of Arrest)
- Arrest
- Confinement



MJ LEADER BRIEF

Current as of 1 OCT 2012

• **Instructor Comments:**

- Whenever a Commander places a Soldier under pretrial restraint, that Commander must inform that Soldier of the nature of the offense that is the basis for that restraint.
- There are 4 types of pretrial restraint which are authorized:
 - Conditions on Liberty: Soldier is ordered to refrain from doing specified acts.
 - Restriction (in lieu of arrest): Soldier is ordered to remain within specified

boundaries (on the installation). Individuals are required to perform full military duties while on restriction.

- Conditions that are too harsh or restrictions on liberty that are too great can be “tantamount to confinement.” Military courts grant credit against any adjudged sentence if it is determined that the restriction amounted to confinement.

- Always contact your trial counsel for guidance on appropriate conditions on liberty or restrictions for a particular situation.

- Arrest: Soldier must stay within specified limits. Individuals under arrest are not allowed to perform their full military duties. (e.g. command, supervision of troops, guard duty).

- Usually there is only a brief period of arrest before placed on restriction or until the Soldier is placed in confinement.

Note: Show Slide 61

Pretrial Confinement

Confinement pending BCD or GCM

Required when there is probable cause to believe the Soldier committed an offense, and it is reasonably foreseeable that:

- Soldier is a “flight risk” OR there is a threat of “serious misconduct”
- AND
- Lesser forms of restraint are inadequate

MJ LEADER BRIEF

Current as of 1 OCT 2012

• **Instructor Comments:**

- Before pretrial confinement is composed, there must be probable cause to believe that serious misconduct will continue OR the Soldier is a flight risk AND lesser forms of restraint are inadequate.

- Serious Misconduct includes things such as witness intimidation or continued drug distribution or use.

- Flight risk determinations are based on the facts of a particular case. It might be based on a Soldier’s comments that he was leaving and never coming back, or a

prior pattern of absences.

- For Pretrial Confinement to be imposed, there must be a showing that lesser forms of restraint are not sufficient (restriction on liberties). Although it is not required that a unit impose lesser forms of restraint before requesting pretrial confinement, evidence that the unit has tried other things and they have failed is very persuasive.

Note: Show Slide 62

Speedy Trial Rules

R.C.M. 707

- The accused must be brought to trial within 120 days of:
 - 1) Preferral of charges, **OR**
 - 2) Imposition of pretrial restraint (RAC):
 - Conditions on liberty (deny pass, pull leave) don't count.
 - Administrative exception.
 - Delays can be approved by the CA or MJ.
 - 3) Entry onto active duty of Reserve personnel for trial.

Article 10

- If a Soldier is in pre-trial confinement the case **MUST** be DISMISSED if the government fails to act with "reasonable diligence." Meeting the 120 Speedy Trial Clock does not necessarily meet "reasonable diligence."

MJ LEADER BRIEF

Current as of 1 OCT 2012

• **Instructor Comments:**

- The clock starts ticking when a Commander prefers charges or orders restrictions.
- Rule 707 requires an accused be "brought to trial" (arraigned) within 120 days (excluding delays). A violation will result in dismissal of the charges (generally w/o prejudice).
- Primary purpose exception:
 - If restraint is imposed for administrative reason (suicide watch) and not for purposes of MJ, the speedy trial clock is not triggered.
- Article 10:
 - A violation of Article 10 may result in dismissal with prejudice.

Check on Learning: None.

Review Summary: None.

CHECK ON LEARNING (ELO I): None.

REVIEW SUMMARY(ELO I): None.

J. ENABLING LEARNING OBJECTIVE

ACTION:	Discuss Unlawful Command Influence
CONDITIONS:	In a classroom environment learn how to avoid Unlawful Command influence
STANDARDS:	You must comprehend/understand how to Avoid Unlawful Command Influence IAW AR 27-10

ELO J - LSA 1. Learning Step / Activity ELO J - LSA 1. Discuss Unlawful Command Influence

Method of Instruction: Briefing

Instr Type(I:S Ratio/Qty): 27A(/0)

Time of Instruction: 0 hrs 10 mins

Instructional Strategy: Lecture

Media Type: PowerPoint Presentation

Security Classification: This course/lesson will present information that has a Security Classification of: U - Unclassified.

Note: Show Slide 63



Current as of 1 OCT 2012

• Instructor Comments:

- Article 37 of the UCMJ prohibits anyone subject to the UCMJ from attempting to coerce, or unlawfully influence the action of a court-martial.

- There are three (3) populations impacted by UCI:
 - Potential panel members
 - Subordinate Commanders
 - Witnesses or potential witnesses.
- Each level of command must exercise independent judgment on disposition of offenses.
 - A superior may act or withhold authority to act in particular cases, but a superior officer cannot order and should not suggest to a subordinate commander how to dispose of a case.
 - Leaders at all levels must refrain from making public comments about cases.

Note: Show Slide 64

10 Commandments Of Unlawful Command Influence

- 1) Do not stack the panel, nor select nor remove court members in order to obtain a particular result in a particular trial.
- 2) Do not disparage the defense counsel or military judge.
- 3) Do not communicate an inflexible policy on disposition or punishment.
- 4) Do not place outside pressure on the judge or court members to obtain a particular decision.
- 5) Do not intimidate witnesses or discourage them from testifying.

MJ LEADER BRIEF

Current as of 1 OCT 2012

- **Instructor Comments:**
 - Read out loud and provide examples of each.

Note: Show Slide 65

10 Commandments Of Unlawful Command Influence

- 6) Do not order a subordinate to dispose of a case in a certain way.
- 7) Do not coach or mentor subordinates on military justice without talking to your legal advisor first.
- 8) Do not disparage the accused or tell others not to associate with him, and do not allow subordinates to do so, either.
- 9) Ensure that subordinates and staff do not commit unlawful command influence, inadvertently or not.
- 10) If a mistake is made, raise the issue immediately and cure with an appropriate remedy.

MJ LEADER BRIEF

Current as of 1 OCT 2012

•Instructor Comments:

- Read out loud and provide examples of each.

Check on Learning: None.

Review Summary: None.

CHECK ON LEARNING (ELO J): None.

REVIEW SUMMARY(ELO J): None.

K. ENABLING LEARNING OBJECTIVE

ACTION:	Summary Takeaways
CONDITIONS:	<i>None.</i>
STANDARDS:	None.

CHECK ON LEARNING (ELO K): None.

REVIEW SUMMARY(ELO K): Note: Show Slide 66

Key Takeaways

- UCMJ jurisdiction
- Conducting inquiries / interviews
- Searches / Administrative inspections
- Nonpunitive administrative actions
- Nonjudicial punishment, article 15
- Pretrial restraint
- Unlawful Command Influence

MJ LEADER BRIEF

Current as of 1 OCT 2012

•Instructor Comments:

- It is essential to understand the military justice system. Proper administration of military justice will ensure good order and discipline, protect the community, and enhance the readiness of the military forces.

Note: Show Slide 67

Questions

MJ LEADER BRIEF

Current as of 1 OCT 2012

SECTION IV. SUMMARY

Method of Instruction:	Briefing
Instr Type(I:S Ratio/Qty):	27A (null:null/0)*
Time of Instruction:	10 mins
Instructional Strategy:	Lecture

Note: Marked as (*) is derived from the parent learning object

Check on Learning

None.

Review/ Summary

None.

SECTION V. STUDENT EVALUATION

Testing Requirements

NOTE: Describe how the student must demonstrate the accomplishment of the TLO. Refer student to the Student Evaluation Plan.

Feedback Requirements

NOTE: Feedback is essential to effective learning. Schedule and provide feedback on the evaluation and any information to help answer students questions about the test. Provide remedial training as needed.

Appendix A - Viewgraph Masters

Military Justice Company Level 181-CCFS-C13 / Version 2

Sequence	Media Name	Media Type
None		

Appendix B - Test(s) and Test Solution(s)

Appendix C - Practical Exercises and Solutions

PRACTICAL EXERCISE(S)/SOLUTION(S) FOR LESSON 181-CCFS-C13 Version 2

Appendix D - Student Handouts

Military Justice Company Level 181-CCFS-C13 / Version 2

Sequence	Media Name	Media Type
0	Complete Presentation	PPTX